

Town of Lincoln

Zoning Board of Review Minutes

September 6, 2005 Meeting

Present: Raymond Arsenault, Kristen Rao, Gabriella Halmi, Arthur Russo, Jr., Nicholas Rampone, Jim King, Town Solicitor Mark Krieger

Excused: David Gobeille

Minutes

Chairman Arsenault asked if there were any revisions or corrections to the August 2005 Minutes. Motion made by Member Russo to accept the Minutes as presented. Motion seconded by Member King. Motion carried with a 5-0 vote.

Chairman Arsenault asked if there were any revisions or corrections to the August 2005 Executive Session Minutes. Motion to accept Minutes as presented carried with a 5-0 vote.

Correspondence

Chairman Arsenault read into the record a letter received on July 28, 2005 from Richard Ackerman, Esquire, attorney for H.L. George Development, regarding the construction of a special care facility on Albion Road, Lincoln, asking to be placed on the agenda. This variance was granted in March 2002 – requests for extensions were granted February 2003, July 2004 and February 2005. Chairman

Arsenault informed Board members that Attorney Ackerman was present and would they hear his request this evening. Board members responded in the affirmative. Attorney Ackerman informed the Board if an extension is not granted they will need to refile the application. Applicant's partner failed to get proper permits and financing in a timely manner. Applicant thought all paperwork was in place. Mr. George has received letters from investors willing to back his proposal. If they come back with another application it may extend the start of the project five to six months. Chairman Arsenault informed Attorney Ackerman that the Board was advised at the February 2005 meeting that it would be the last request for an extension. Applicant is also involved with an adjacent project near the site which is ongoing and they are dealing with Engineers to secure a sewer line which will have no impact on this project. Chairman Arsenault made a recommendation to deny the request for an extension. Attorney Ackerman asked if their request for an extension could be continued to the November agenda so applicant could come back with more concrete information for the Board. Motion made by Member Rao to continue the application to the November agenda. Motion seconded by Member Russo. Motion carried with a 5-0 vote

Chairman Arsenault read into the record a petition submitted by Attorney Michael Horan on behalf of Dimity and Elena Litmanovich asking the Board to reconsider its decision of August 2, 2005 denying their application. They are amending the size of their proposed

addition so there will be no need for a dimensional variance to the front yard setback off Linfield Circle. Motion made by Chairman Arsenault to continue the application to the October and would all in favor state “aye”. Motion carried with a 5-0 vote.

Applications

Paul & Margaret Quinn, 2 Fairlawn Way, Lincoln, RI/Town of Lincoln, 100 Old River Road, Lincoln, RI – Dimensional Variance for front yard width/merger of property located at 2 Fairlawn Way, Lincoln, RI.

AP 28, Lot 67

Zoned: RL 9

Sue Sheppard, Town Administrator

The Town is looking to improve the parking situation at Fairlawn School. When a survey was done of the property, the Town found out they had been encroaching on the Quinn land for a long period of time. Attorney Krieger approached the Quinns and they agreed to sell a portion of their driveway to the Town. The surveyor identified at the bottom of the map the amount of variance needed. Russell Hervieux, Zoning Official informed the Board that the Town was looking for an 11.7 foot variance. This request is due to the unique character of the subject property, hardship is not a result of any prior action of the Town, and if granted will not alter the general character of the area and is the least relief necessary and amounts to more than a mere inconvenience to the Town if not granted.

Chairman Arsenault read into the record Planning Board/Technical

Review Committee recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The proposed dimensional variance is to relieve an existing encroachment issue between the Fairlawn Elementary and the Quinn family. The owners of the property did not create this issue. The applicant intends to purchase the portion of the owner's land to relieve this encroachment. The Planning Board recommends Approval of this application. The Board finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

Opposed:

Richard Pina, Smithfield Avenue, Lincoln, RI

There have been problems with both lots in question since the time it was purchased from the Narragansett Electric Company. (Submitted picture of the Quinn home as Exhibit A). Address of applicant is not 2 Fairlawn Way because the curb cuts are on Parker Street. Attorney Krieger stated that he performed a title search on behalf of the town and the address of record is 2 Fairlawn Way. Property was also surveyed by Marsh Associates.

Town Administrator asked Mr. Quinn what his address was and he replied 2 Fairlawn Way which is the address the Town gave him when he purchased the home.

Motion made by Member Halmi to grant an 11.7 foot variance stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is the least relief necessary.**
- Hardship amounts to more than a mere inconvenience.**

Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Daniel Zilka, 89 Industrial Circle, Lincoln, RI/3J Corporation, 90 Industrial Circle, Lincoln, RI – Dimensional Variance for front yard setback for the operation of a prefabricated historic diner/small restaurant on property located at 82 Industrial Circle, Lincoln, RI.

AP 2, Lot 82

Zoned: MG 05

Russell Hervieux, Zoning Official informed the Board that applicant did not submit notice labels and there was a notice problem.

Applicant asked the Board that his application be withdrawn without prejudice as he was looking to purchase property in Pawtucket and could possibly be returning before the Board in the future.

Motion made by Member Halmi to accept applicant's request to withdraw his application without prejudice. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Ferreira Concrete, 7 Tallman Avenue, East Providence, RI/Liquid Blue, 1 Crownmark Drive, Lincoln, RI – Dimensional Variance for rear yard setback for the construction of an addition.

AP 28, Lot 67 Zoned: MG- 0.5

Russell Hervieux, Zoning Official stated there was a notice problem with this application. No labels had been received from the applicant for mailings.

Represented by: Fred Stolle, Esquire

Submitted as applicant's exhibits:

Exhibit 1 Notice entering his appearance on behalf of applicant

Exhibit 2 Amended notice signed by Wayne Kazirian, Agent for Conreal LLC

Exhibit 3 Amendment in correction of page 2 of the application for Dimensional Variance

Exhibit 4 Enlarged site plan and plat map

Exhibit 5 Copy of Planning Board recommendation

Attorney stated notices were hand delivered to abutters with regards to improper notice.

Chairman Arsenault read into the record standards that needed to be met for a Dimensional Variance.

Chairman Arsenault read into the record Planning Board/Technical Review Committee recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted site plan and application. Based on the submitted plans, the proposed commercial addition will be located on the side of the existing building. The Planning Board feels that the requested dimensional variance is appropriate but the application does not address some critical issues. The Board identified an issue with the existing loading dock. Will this loading dock still be used after the new addition is constructed? If so, how will delivery trucks safely access it. Next, does the existing parking meet the parking requirements that will be needed for the new addition? If the applicant can successful address these issues, the Planning Board recommends Approval of the dimensional application.

The plat map shows Smithfield and Lincoln property lines running through the building. To the left of the building is Smithfield and east

of the building is Lincoln. The property straddles both towns. Smithfield feels no need to appear before them but relief must be granted for Lincoln.

Witness

Mr. Perreira, Owner

He has been in the construction industry for 20 years. Lot consists of 5.13 acres, has 537 foot frontage and is located in a MG 5 zone. Liquid Blue is a tenant of his. Building will be constructed of steel and 200 feet wide by 80 feet deep which will be used as warehouse space. He is asking for 100% relief which will not alter the area. If application were denied, this would create a hardship and he could not build the needed warehouse space and get rid of the trailers currently used for storage. There are two existing loading docks but only one will be used. No problem with trucks accessing the site. Mr. Perreira has 124 employees and there is sufficient parking at the site – 109 spaces. Willing to remove one of the loading docks if the Board includes it as a condition to approval of the application. Entry to the facility would be through the main door and there are additional doors on either side of the building. Signage is at the front of the building for trucks making deliveries. No signs listing the name of the company on the building. Will be storing T-shirts at the site.

Motion made by member Russo to approve the application for maximum zero relief with the condition that applicant remove one of the existing docks. He further stated:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.
- Relief requested is the least relief necessary.
- Hardship amounts to more than a mere inconvenience.

Motion seconded and carried with a 5-0 vote.

**RJB Properties, LLC, 640 George Washington Highway, Lincoln, RI –
Dimensional Variance for relief from width requirement for lot
frontage for property located on Breakneck Hill Road.**

AP 25, Lot 168

Zoned: BL 05

**Chairman Arsenault read into the record standards that needed to be
met for a Dimensional Variance.**

**Represented by: Peter G. Ruggiero, Esquire, 20 Centerville Road,
Warwick, RI**

Property is located off of Breakneck Hill Road behind a former school

building which has been converted into office space. Applicant has appeared before the Planning Board and Town Council regarding the proposed construction. Lot is legal pre-existing lot of record created in the 1950s to accommodate possible future expansion of the school. Property has frontage on Route 146 and Breakneck Hill Road.

Witness

Gene Tondreault, PE #3313, Bryant Associates

He has been a civil engineer for 35 years and has appeared before other town boards. Motion made to accept Mr. Tondreault as an expert witness. Motion seconded and carried with a 5-0 vote.

Mr. Tondreault did a site plan and zoning plan. Lot 57 and 168 are owned by applicant – lot 71 and 58 are owned by the YMCA. Lot 57 is the developed parcel. Roadway to building will be landscaped and maintained by applicant. All lot dimensions meet town requirements. Applicant and YMCA have an agreement to share access road. Road is 36 feet from cut to curb and is accessible to fire trucks. YMCA will use the road for their buses. Parking for lot 168 consists of 76 spaces – one space per 300 square feet – which include handicap spaces. Building will be located 200 feet from the entrance on Breakneck Hill Road.

Witness

Christopher Bleyer (Building Designer), Syracuse University

Motion made, seconded and carried with a 5-0 vote to accept Mr.

Bleyer as an expert witness.

Most prominent view of this building will be from Route 146. Proposed building will fit into character of the area. New building will front on Breakneck Hill Road and Route 146. Existing office building at entrance was designed in 1912 and new building façade will have the same circa brick look. Brick colors and window trim will match complimenting the existing school/office building at the entrance. They are estimating building will have two tenants per floor. There is an existing sign for the school/office building at the entrance which new signage will match. Signage at the roadway entrance will be lit. There will be no signage on the Route 146 side of the building.

Earl Branca, owner/developer, informed the Board that signage for the site is not finalized yet but will be monument style matching an existing sign at entrance. There will be exterior upwards post lighting for the parking lot. Mr. Tondreault informed the Board that they have submitted a physical alteration permit application which has been approved by the Department of Transportation.

Chairman Arsenault read into the record Planning Board recommendation:

The proposed dimensional variance is to clear up the pre-existing nonconformance of this parcel of land. This lot was platted before present day zoning regulations. The Planning Board recommends Approval of this application. The Board finds that the relief requested will not alter the general character of the surrounding area or impair

the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

Opposed

John Gates

Not opposed but concerned about a dirt barrier at the site. Asked applicant questions about elevation and sloping at the site, which was addressed. Concerned about noise level from Route 146 because trees were cut down.

Opposed

Edward O'Neil

Asked if the proposed roadway has been approved. Applicant replied it will be a private driveway and that a traffic study was done and submitted to the Department of Transportation for the physical alteration permit, which was approved. Mr. O'Neil stated he felt the hardship was self-imposed.

Opposed

Ronald Stewart

Was not aware a traffic study had been done and submitted to Department of Transportation.

Attorney Ruggiero stated a traffic study had been done by Mr. Tondreault for the Department of Transportation physical alteration

permit application. Road will be a private drive and not maintained by the Town. The Planning Board has recommended approval of this application. The lot is a legal pre-existing lot of record and the easement for the roadway is perpetual. An easement has been recorded for the roadway.

Motion made by Member Rao to approve a 90 foot front yard easement stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.
- Relief requested is the least relief necessary.
- Hardship amounts to more than a mere inconvenience.

Motion seconded by Member Russo. Motion carried with a 5-0 vote.

John Picozzi, 1571 Lonsdale Avenue, Lincoln, RI – Special Use Permit for the operation of an office within the home.

AP 4, Lot 64

Zoned: RG 7

Russell Hervieux, Zoning Official informed the Board that there was a problem with notice on this application. Five abutter notices have been returned causing a defective notice issue with the application.

Chairman Arsenault informed Mr. Picozzi that in addition to defective notice, his application was missing a site plan, radius map and office layout and recommended that applicant ask for a continuance to the October agenda. Applicant agreed and asked that his application be continued to the October agenda.

Motion made by Member Russo to continue the application and seconded by Member Rao. Motion carried with a 5-0 vote.

Alan Costantino, 10 Dennell Drive, Lincoln, RI – Dimensional Variance for side yard setback for the construction of a 2-car garage.

AP 42, Lot 77

Zoned: RS 20

Represented by: William Floriani, License A00200R

He has been in business for 43 years; worked for the City of Providence for 30 years; and is an appraiser. (Resume submitted as Exhibit A). Motion made by Member Rao to accept Mr. Floriani as an expert witness. Motion seconded by Member Russo and carried with a 5-0 vote.

Chairman Arsenault read into the record standards that needed to be

met for a Dimensional Variance.

House currently has a 2-car garage and applicant has 6 children – 3 of which have their licenses. Wants to alleviate cars parking in the driveway. Applicant is looking for an 11.5 foot side yard setback. Will not change the roofline and will match brick exterior of existing house. Will plant additional landscaping in the yard. Current 2-car garage is accessed from the side.

Chairman Arsenault informed Mr. Costantino that he would like to see a site plan clarifying where the existing garage is attached and where the proposed garage will be located. He would also like to see a stamped radius map and recommended continuing the application to the October agenda so applicant can return with the requested plans. Applicant asked that the application be continued to the October agenda.

Member Rampone made a motion to continue the application to the October agenda. Motion seconded by Member Rao and carried with a 5-0 vote.

Frank & Rita St. Pierre, 49 Williams Street, Lincoln, RI – Dimensional Variance for rear, side and front yard setback for the construction of a sun room to existing house.

AP 16, Lot 198

Zoned: RL 9

Russell Hervieux, Zoning Official informed the Board that there was a problem with notice on this application. One notice was returned and he contacted the applicant and applicant provided him an affidavit from the homeowner. Attorney Krieger informed the Board that the affidavit was acceptable as proper notice.

Chairman Arsenault read into the record standards that needed to be met for a Dimensional Variance.

Applicant asked to amend his application which listed wrong dimensions. They would like to construct a 12'x16' sunroom at the rear of the house replacing a bay window with sliding doors for access. The best location to construct the sunroom is behind the house. Siding for sunroom and roofline will match existing house. There are other homes in the area with sunrooms.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Approval of this application. The Board finds that the dimensional variance is consistent with the neighborhood, will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance, or the Comprehensive Plan.

Motion made by Member Russo to grant a 10.38 foot front yard setback, 16.46 rear yard setback, and 4.94 foot setback on the southwest side. He further stated:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is the least relief necessary.**
- Hardship amounts to more than a mere inconvenience.**

Motion seconded by Member Rao. Motion carried with a 5-0 vote.

Robert G. Jaworski, 12 Boulevard Avenue, Lincoln, RI - Dimensional Variance for lot width for the construction of a single family residence at 46 Boulevard Avenue, Lincoln, RI.

AP 10, Lot 88 Zoned: RL 9

Chairman Arsenault read into the record standards that needed to be met for a Dimensional Variance.

Represented by: James Briden, Esquire

Submitted into the record a Power of Attorney for Dalphne (Exhibit A).

Attorney Briden asked that the application be amended from 60 foot frontage to 50 foot frontage. Russell Hervieux, Zoning Official informed Attorney Briden that the plot plan shows 60 feet and there is no need for an amendment. Attorney Briden asked that his request for an amendment be withdrawn. This is a legal pre-existing lot of record.

Witness

Robert G. Jaworski

Lot width is 15 feet short and is a legal pre-existing lot of record which was purchased by his mother in 1953. Existing foundation is collapsing and the interior and exterior of house is beyond repair and needs extensive renovations. House straddles Lot 87 and 88 and lot size is 10,800 square feet. Chairman Arsenault asked why not merge the lots. Applicant wants to build a house on both lots. Existing house should be demolished. 1/3 of the house is on lot 87 and 2/3 on lot 88. Applicant wants to build a 30'x40' home for himself on one lot and sell the other. Lot is uniquely shaped. Square footage of other homes in the area are similar to or less than 10,800 square feet. He has lived on this street for 50 years. Parents should have put in French drains to prevent water damage to the foundation. There are three retaining walls at the rear of the property which are in good shape. The walls are built with railroad ties. Depiction of building envelope on map is accurate. Submitted stamped copy of original

deed as Exhibit C.

Member Rao stated she was struggling with how this is not to realize greater financial gain. Attorney replied that by way of testimony the existing structure has to be taken down and the adjacent lot is a buildable lot. The subject lot, which is a pre-existing lot of record in a residential zone, has no other use other than a single family home. If he is not allowed to build a home there is no other use for a residential lot. They are separate and distinct lots. House has been vacant since mother left. Looks fine on the outside but deplorable on the inside. House been on the market two years this November.

Chairman Arsenault read into the record Planning Board recommendation:

The proposed dimensional variance is to clear up the pre-existing nonconformance of this parcel of land. This lot was platted before present day zoning regulations. The Planning Board recommends Approval of this application. The Board finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

Opposed:

John Zingari

He owns property across the street. His house also straddles two lots and was built in 1948. He feels the square footage of applicant's lot

size is deceiving. Applicant has wetlands on his property which slopes in the rear. Feels this would change the general character of the area by putting two houses where one used to be.

James Burgess

He owns lot 85 and feels what is being proposed would affect character of the area. He bought his house 13 years ago because he liked the neighborhood the way it was – not what it will be. What type of construction would the proposed houses be?

Elizabeth Heroux

Applicant wants to build a house on each lot which makes no sense to her. Feels this would change the neighborhood and possibly set a precedent for future construction. Wetlands at the rear of the property are an issue she is concerned about and fears that at some point in time would create a problem with the foundation.

Attorney Briden stated they respect the concerns expressed by the abutters. The common concern was that this would change the character of the neighborhood, however, they disagree with that point. The Town via the Planning Board indicated it would not change the character of the neighborhood in that it is consistent with the

Comprehensive Plan. The site plan shows most of the houses in the area are substandard sized lots. There is a two family dwelling in the area. The applicant has satisfied the standards for a Dimensional

Variance.

Chairman Arsenault addressed Attorney Briden stating that he failed to mention that Lots 83 and 84 all exceed about 20,000 square feet and he had problems with this application. There are house lots in the area that have been there since 1953 or before that have been used as single family residences. Applicant cannot be forced to merge the lots but he cannot understand why he would not do so. Chairman also stated that they did not hear any testimony from a real estate experts.

Motion made by Member Rao to deny the application for a dimensional variance stating:

- Hardship from which the applicant seeks is not due to the unique characteristics of the subject land.**
- Hardship is the result of any prior action of the applicant and does result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will alter the general character of the surrounding area and impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is not the least relief necessary.**
- Hardship does not amount to more than a mere inconvenience.**

Motion to deny seconded by Member Russo.

Discussion:

Chairman stated he agreed with Member Russo. He felt the abutters who live in the neighborhood stated that this would make a substantial impact on the community and create a situation that would intensify the area. Member Russo said the fact that these two lots have been used together weighed heavily on his mind and maybe applicant should approach the Tax Assessor for a merger to lessen the tax burden.

Motion carried with a 5-0 vote.

Ray & Christine Poulin, 418 New River Road, Manville, RI – Dimensional Variance for front, rear and side yard setback for the construction of a single family residence.

AP 34, Lot 391 Zoned: RS 20

Chairman Arsenault read into the record standards that needed to be met for a Dimensional Variance

Represented by: Joseph Raheb, Esquire

This is a one acre lot which is 400 feet long. The rear yard of the property is steep and sloping and applicant would need an 80 foot driveway and retaining wall. There would be no financial gain as the house is owner occupied. There are other houses in the area which have received similar variances. Proposed addition would blend into

the neighborhood and a variance would reduce the length of the driveway from 80 feet to 30 feet. There is no other alternative other than the variance which is being requested.

Witness

Raymond Poulin

Garage will have no plumbing or heating – would be used for storage only. This is the least relief necessary. Plans on replacing old roof which will match addition.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Denial of this application. The Board examined the submitted plan and setback requirements and feels that the application does not meet the requirements for a dimensional variance and is not the least relief required.

Motion made by member Rampone to grant a 9 foot side yard setback with a condition that the roofline from the existing dwelling will be maintained to the addition. He further stated:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**

- **Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- **Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- **Relief requested is the least relief necessary.**
- **Hardship amounts to more than a mere inconvenience.**

Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Member Rao made a motion to adjourn. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Respectfully submitted,

Ghislaine D. Therien

Recording Secretary